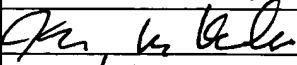


<h1>TRANSMITTAL FORM</h1> <p>(to be used for all correspondence after initial filing)</p>	Application Number	10/006,017	
	Filing Date	December 4, 2001	
	First Named Inventor	Burns, John G.	
	Group Art Unit	3643	
	Examiner Name	Unknown	
Total Number of Pages in This Submission	14	Attorney Docket Number	717901.19

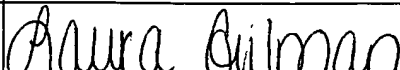
ENCLOSURES (check all that apply)

<input type="checkbox"/> Fee Transmittal Form	<input type="checkbox"/> Assignment Papers (for an Application)	<input type="checkbox"/> After Allowance Communication to Group
<input type="checkbox"/> Fee Attached	<input type="checkbox"/> Drawing(s)	<input type="checkbox"/> Appeal Communication to Board of Appeals and Interferences
<input type="checkbox"/> Amendment / Reply	<input type="checkbox"/> Licensing-related Papers	<input type="checkbox"/> Appeal Communication to Group (Appeal Notice, Brief, Reply Brief)
<input type="checkbox"/> After Final	<input type="checkbox"/> Petition	<input type="checkbox"/> Proprietary Information
<input type="checkbox"/> Affidavits/declaration(s)	<input type="checkbox"/> Petition to Convert to a Provisional Application	<input type="checkbox"/> Status Letter
<input type="checkbox"/> Extension of Time Request	<input type="checkbox"/> Power of Attorney, Revocation Change of Correspondence Address	<input checked="" type="checkbox"/> Other Enclosure(s) (please identify below) Renewed Petition Under 37 CFR Sec. 1.182; Exhibits A-D; return postcard.
<input type="checkbox"/> Express Abandonment Request	<input type="checkbox"/> Terminal Disclaimer	
<input type="checkbox"/> Information Disclosure Statement	<input type="checkbox"/> Request for Refund	
<input type="checkbox"/> Certified Copy of Priority Document(s)	<input type="checkbox"/> CD, Number of CD(s) _____	
<input type="checkbox"/> Response to Missing Parts/ Incomplete Application	Remarks:	
<input type="checkbox"/> Response to Missing Parts under 37 CFR 1.52 or 1.53		

SIGNATURE OF APPLICANT, ATTORNEY, OR AGENT

Firm or Individual Name	Kevin M. Kercher, Reg., No. 33,408 Blackwell Sanders Peper Martin LLP
Signature	
Date	October 30, 2002

CERTIFICATE OF EXPRESS MAILING

I hereby certify that this correspondence is being deposited with the United States Postal Service with sufficient postage as Express Mail in an envelope addressed to: Commissioner for Patents, Box PCT, Washington, DC 20231 on this date: October 30, 2002. Express Mail Label No.: EL493160476US			
Typed or printed name	Laura Gilman		
Signature		Date	10/30/02

Burden Hour Statement: This form is estimated to take 0.2 hours to complete. Time will vary depending upon the needs of the individual case. Any comments on the amount of time you are required to complete this form should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, Washington, DC 20231. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. SEND TO: Assistant Commissioner for Patents, Washington, DC 20231.

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Application of: John Granville Burns)	
)	
U. S. Patent Application Serial Number: 10/006,017))	Examiner: Unknown.
)	
U.S. Filing Date: December 4, 2001)	Group Art Unit: 3643
)	
PCT No.: PCT/GB00/02134)	Confirmation No. 7708
)	
International Filing Date: June 2, 2000)	Customer No. 27128
)	
Priority Data: June 4, 1999)	
(U.K. Patent No. 9912909.0))	
)	
Priority Data: May 30, 2000)	
(U.K. Patent No. 0012882.7))	
)	
For: PLAYING SURFACE SUBSTRATE, IN)	
PARTICULAR TURF MATS)	
)	
Publication No. US 2002/0045489 A1)	
Attorney Docket: 717901.19)	

Assistant Commissioner for Patents
Attn: BOX PCT
Washington, D.C. 20231

RENEWED PETITION UNDER 37 C.F.R. SECTION 1.182

INTRODUCTION:

The Applicant's Petition to correct a mere clerical error that prevented the entering of the national phase for the above patent application by utilizing the wrong transmittal form was dismissed without prejudice on August 30, 2002.

STATEMENT OF FACTS:

A standard patent application transmittal was inadvertently utilized. The standard patent application transmittal that was inadvertently utilized by the Applicant could only be utilized with the filing of a “**new** nonprovisional patent application under 37 C.F.R. Section 1.53 (b)” (See Exhibit A, which is hereby attached). The Applicant only filed a preliminary amendment, which must amend a prior patent application and cannot be deemed a new patent application. Therefore, the only clear indication that can be derived from the use of this transmittal is that the wrong transmittal was utilized.

Moreover, there are only three forms listed on the United States Patent Office Website related to the PCT ” (See Exhibit B, which is hereby attached). The first form is for filing a continuation or divisional of an international application.” (See Exhibit C, Form PTO/SB/13/PCT, which is hereby attached). As highlighted, the United States Patent Office requires that with this Form, the mandatory inclusion of a patent specification, claims and drawings. Although a preliminary amendment can be included to amend the specification, claims or drawings, a preliminary amendment cannot be filed by itself as a continuation application. Therefore, not only was this recommended transmittal not used for a continuation application but the recommend transmittal requires the filing of the specification, claims or drawings and precludes the filing of a preliminary amendment by itself.

The preliminary amendment filed by the Applicant is specifically directed to Box PCT, United States Designated/ Elected Office (DO/EO/US) (See Exhibit D). No patent applications filed under 37 C.F.R. Section 1.53, may be filed at Box PCT, United States Designated/ Elected Office (DO/EO/US). Applicant did not provide the U.S. Patent Office with any authorization to remove this correspondence from Box PCT.

The other two forms, as shown in Exhibit B provide a petition for revival of an international patent application where the Applicant either unavoidable or unintentionally abandons the international patent application and files nothing within the requisite time period and is completely dilatory. Therefore, the rectification of national phase filing status to a patent application is fully sanctioned by the United States Patent Office and is awarded as a matter of course under United States Statutes and Rules.

POINTS TO BE REVIEWED:

1. Can a **new** patent application be filed under 37 C.F.R. Section 1.53 by only filing a preliminary amendment?
2. Can a bypass continuation patent application of a International PCT application be filed with only a preliminary amendment when the United States Patent Offices' own transmittal form mandates the filing of a specification, claims and drawings with only the **optional** inclusion of an **additional** preliminary amendment?
3. Is there any ambiguity regarding the applicant's intent when there are two places to receive an indication of intent regarding treatment of the correspondence with the first indication of intent was that the preliminary amendment is specifically addressed to Box PCT, United States Designated/ Elected Office (DO/EO/US), which only allows the filing of a preliminary amendment for a national phase patent application and the second potential indication of intent was the transmittal that mandated the filing of **new** patent application under 37 C.F.R. Section 1.53 (b), which is clearly and completely erroneous on its face when only a preliminary amendment is filed?
4. Should the Applicant, because of his status as a foreign citizen, suffer an undue hardship and prejudice due to the loss of PCT national phase status? The Applicant will be required to provide certified copies of Great Britain Patent No. 9912909.0, Great Britain Patent No. 0012882.7 and PCT International Application PCT/GB00/02134, which is very prejudicial against this foreign individual since a similar requirement is not required for a PCT national phase application since the certified copy of this Great Britain Patent, has already been filed. Also, it is not required of U.S. citizens regarding co-pending U.S. patent applications. There is also a separate PCT definition for unity of invention that may be construed as more liberal than that found under United States Regulations so that by proceeding under U.S. Regulations will also pose a severe detrimental hardship to this Foreign Applicant.

ACTION REQUESTED:

Treatment of U.S. Application Patent Serial No. 10/006,017 as a U.S. national phase patent application of International Patent Application No. PCT/GB00/02134 is respectfully requested.

DISCUSSION:

When all provisions under 35 U.S.C. 371 have been complied with, the Applicant should not be unjustly deprived of national phase filing status. All aspects of 35 U.S.C. 371 have been met including the fee, the copy of the international application (already provided) and an amendment.

There are two (2) possible places to determine the intent of the Applicant regarding this patent application. The first and primary indication of intent is that the preliminary amendment was **specifically addressed to Box PCT, United States Designated/ Elected Office (DO/EO/US) (See Exhibit D)**. Box PCT, under Official Gazette Notices dated February 5, 2002 is “**only for mail related to applications filed under the Patent Cooperation Treaty.**”

The second potential indication of intent is the transmittal, inadvertently used by the Applicant. This transmittal specifically requires and mandates that it “**can only be used a new patent application** under 37 C.F.R. Section 1.53 (b)” (See Exhibit A). Since only a preliminary amendment was filed, this is a clear and unambiguous indication that this transmittal was in error and provides no indication of intent to file a bypass continuation patent application, which is the only other possible option. The United States Patent Office requires on their authorized transmittal when filing a bypass continuation, see Exhibit C, Form PTO/SB/13/PCT, the mandatory inclusion of a specification, claims and drawings. Although a preliminary amendment is listed as an optional element that may be checked as being included to amend the specification, claims or drawings, it is clear that it may not be filed **in lieu of** the specification, claims or drawings.

Therefore, upon even a cursory review of all of the facts and circumstances in this situation, the desire by the Applicant to file a national phase patent application is absolutely clear and completely unambiguous with no conflicting instructions. A transmittal can only be used with a new patent application is utterly meaningless when only a preliminary amendment is filed. A preliminary amendment, by definition, must actually amend a preexisting document.

The other two national phase PCT forms provided by the U.S. Patent Office, as shown in Exhibit B, provide a petition for revival of an international patent application where the Applicant either unavoidable or unintentionally abandons the international patent application and files nothing within the requisite time period and is completely dilatory. Therefore, it is respectfully believed that the rectification of national phase filing status for a patent application is fully sanctioned by the United States Patent Office as well as the U.S. statutes and regulations and is awarded as a matter of course.

In this case, there is full compliance with all aspects of 35 U.S.C. 371. However, even assuming, arguendo, that there was not full compliance and the national phase patent application was abandoned, the Applicant can simply file a petition stating the abandonment was unintentional and revive the patent application as a mere matter of course. This will result in two pending patent applications covering the same exact subject matter. This is barred by the United States Patent Office and the Courts as **double patenting** under U.S. statutes and regulations as outlined in the Manual of Patent Examining Procedure Chapter 804 as well as under 35 U.S.C. Sections 101 and 121.

Therefore, since the United States Patent Office provides correction of virtually every type of error and irregularity, there is no reason not to convey national filing status on this patent application. This includes correction of inventorship, correction of a filing date, and so forth. The United States Patent Office even allows for filing of missing pages of a patent application and missing drawings at a later date, while providing the Applicant with the filing date of the few papers that were initially filed.

It is respectfully believed that there is sufficient cause since the Applicant is a foreign citizen, so that loss of U.S. national phase status will require a certified copies of Great Britain Patent No. 9912909.0, Great Britain Patent No. 0012882.7 and PCT International Application PCT/GB00/02134, which operates as an extreme hardship and is very prejudicial against this foreign individual since a similar requirement is not required for the U.S. national phase patent application since a copy has already been filed with the PCT International Application PCT/GB00/02134. Also, it is not required of U.S. citizens with regard to co-pending patent applications that were filed in the United States. Moreover, the standard for unity of invention is much more liberal under the PCT Regulations than under U.S. Regulations, which could also provide a hardship for this Foreign Applicant. It is respectfully believed that constitutional

issues are raised when similarly situated applicants are treated differently based on their country of origin.

CONCLUSION:

The undersigned respectfully submits that the present application should have U.S. national phase filing status. Upon review of the preliminary amendment identification heading and the transmittal document, the Applicant clearly and unequivocally expressed his intent to have a U.S. national phase patent application. The preliminary amendment was specifically addressed to Box PCT, United States Designated/Elected Office (DO/EO/US), which only accepts PCT patent applications and not U.S. bypass continuation patent applications. There is a separate PCT continuation application transmittal that was not used. The filing of a continuation application based on an international application requires the mandatory filing of a specification, claims and drawings and the addition of a preliminary amendment is an **optional added element**. There is no provision for the filing of a preliminary amendment in lieu of a specification, claims and drawings on the standard form provided by the United States Patent Office. **A transmittal that is mandated for use only with a new nonprovisional patent application under 37 C.F.R. Section 1.53 (b) is completely meaningless when used with a preliminary amendment, which by definition can only modify an existing patent application.**

Also, since an applicant who completely ignores the filing deadline for a PCT application can file a petition that explains that the delay was unintentional and easily receives a U.S. national phase application should not be in a superior position to an applicant who has fully complied with 35 U.S.C. Section 371 by filing all requisite items within the requisite time period.

Moreover, the loss of U.S. national phase status for this Foreign Applicant will operate as an extreme hardship by requiring a certified copy of a foreign patent application, which the Applicant has already provided as part of the international application process. It is also very prejudicial to this Applicant since similarly situated U.S. Applicants claiming priority from copending U.S. patent applications are not under this same requirement. This also applies to the unity of invention standard, which can be construed as more liberal under the Patent Cooperation

Treaty than under U.S. law and will operate to this Foreign Applicant's extreme prejudicial detriment.

Therefore, Applicant respectfully requests that this patent application be rightfully treated as a U.S. national phase patent application. If a telephone conference would facilitate resolving any issue related to this petition, the undersigned attorney for Applicant would appreciate and welcome such a telephone conference. The attorney for Applicant may be contacted as provided below.

Respectfully submitted,

Dated: October 30, 2002



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